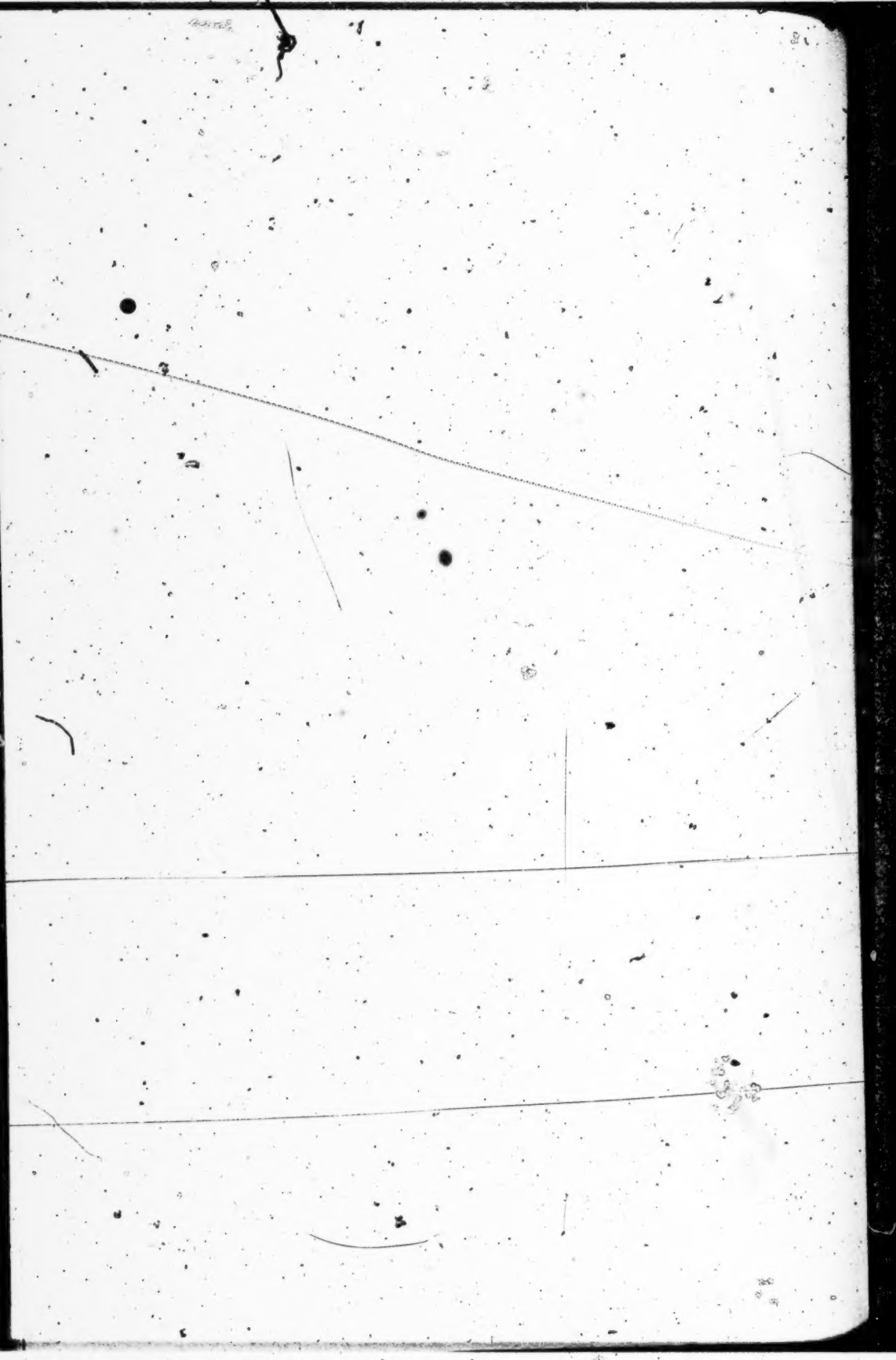

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 112

THE FEDERAL LAND BANK OF COLUMBIA,
PETITIONER,

vs.

MRS. WILL GAINES, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA.

BRIEF ON BEHALF OF PETITIONER.

I. Statement of Case.

1. *Nature of Proceeding Below.*

This was a controversy without action between The Federal Land Bank of Columbia, hereinafter called the bank, as plaintiff, and Mrs. Will Gaines, hereinafter called the borrower, as defendant, under Section 626, Consolidated Statutes of North Carolina (Section 626, Michie's North Carolina Code of 1931). The controversy was submitted to

the Superior Court of Polk County, North Carolina, upon an agreed statement of facts (R. 2-4), to which certain Exhibits were annexed.

2. *History of Case Below.*

The question submitted upon the agreed statement of facts was whether there was consideration for the real estate mortgage executed and delivered to the bank by the borrower through the Columbus National Farm Loan Association, pursuant to the provisions of the Federal Farm Loan Act (Title 12, Chap. 7, U. S. C.).

The Superior Court of Polk County, North Carolina, rendered and entered a judgment (R. 18) that the mortgage was not a valid mortgage and was not a lien against the property described therein, except to the extent of $54.23, representing an amount paid for taxes; and ordered, adjudged and decreed that the mortgage be canceled upon payment of $54.23 by the borrower to the bank.

The bank duly appealed to the Supreme Court of North Carolina from the judgment rendered and entered by the Superior Court of Polk County, North Carolina. After hearing the appeal, the Supreme Court of North Carolina, upon an opinion filed by it on March 1, 1933 (R. 23), rendered a decision affirming the judgment of the lower court. An order, staying execution, signed by the Chief Justice of the Supreme Court of North Carolina, on March 13, 1933, has been filed in accordance with Section 350, Chapter 9, Title 28, U. S. C. (R. 29).

The opinion of the Supreme Court of North Carolina (R. 23) was filed on March 1, 1933, and is reported in 204 N. C. Reports, 278, 167 S. E. 856.

3. *Jurisdiction of This Court.*

The jurisdiction of this Court is invoked under Section 344(*b*), Title 28, U. S. C. (Judicial Code, Section 237). The

titles, rights, privileges and immunities specially set up and claimed by both parties to the cause are based upon and governed by a statute of the United States: that is, the Federal Farm Loan Act. The Supreme Court of North Carolina, the highest court of that State, has rendered a final judgment in this cause (R. 27).

4. *The Facts.*

On August 16, 1930, the borrower made written application (R. 20) through the Columbus National Farm Loan Association to the bank for a loan of $1,000, offering as security for the loan a mortgage on 27 acres of land in Polk County, North Carolina. The application was approved by the Columbus National Farm Loan Association on August 20, 1930, and on that date Mrs. Gaines was admitted to membership in said association. The application was approved by the bank on October 1, 1930. She employed Messrs. Jones and Massenburg as attorneys to prepare an abstract of title to her land, and the abstract was given to the bank on October 25, 1930.

On November 5, 1930, the borrower executed and delivered to the bank a note (R. 22) and mortgage (R. 4) for the loan in the amount of $1,000. The note was indorsed by the Columbus National Farm Loan Association in the following words: "The undersigned association hereby indorses the within note and becomes liable for the payment of the indebtedness evidenced thereby in accordance with the terms therof (R. 22).

On November 14, 1930, the bank sent to Messrs. Jones and Massenburg its check on the Commercial National Bank of Charlotte, North Carolina, dated November 12, 1930, for $945.00, payable jointly to Percy Lewis, Secretary-Treasurer of the Columbus National Farm Loan Association, and the borrower, with instructions to the attorneys and to the

secretary-treasurer of the Columbus National Farm Loan Association for closing the loan to Mrs. Gaines. With the check was sent an itemized statement, designated "Closed Loan Statement" (R. 13), to be filled in by the secretary-treasurer of the Columbus National Farm Loan Association and signed by him and the borrower. The check represented the net proceeds of the loan after making certain deductions, the propriety of which are not disputed. The check was delivered by the attorneys to Percy Lewis, Secretary-Treasurer of Columbus National Farm Loan Association, on November 18, 1930. Lewis indorsed the borrower's name on the check by her parol authority. The right of the secretary-treasurer to indorse for the borrower pursuant to this authorization has at no time been questioned and is not an issue in this case. Lewis also indorsed his own name as secretary-treasurer of the Columbus National Farm Loan Association and deposited the check in the Polk County Bank and Trust Company of Columbus, North Carolina, to the credit of the Columbus National Farm Loan Association, the trust company being the duly designated depositary of the association. The check was paid by the Commercial National Bank of Charlotte, upon which it was drawn, on November 19, 1930, and the proceeds were in due course paid to the Polk County Bank and Trust Company by its correspondents. The Polk County Bank and Trust Company failed to open for business on November 22, 1930. With the exception of $54.23 which was paid out by Lewis for taxes on the borrower's land at the time of the bank's closing, the balance of the proceeds of the loan were on deposit. At the time of this transaction the Polk County Bank and Trust Company was the only bank in Columbus, North Carolina.

No payments on the loan have been made by the borrower to the bank, although the bank has demanded from the borrower payment of the interest, which under the

terms of the note executed by her was due December 1, 1930, and of the interest and the first installment of principal, which were due December 1, 1931.

II. Questions Presented.

The first question stated below arises under the general law, and will be discussed briefly immediately following the enumeration of the questions presented in this case. The remaining questions involve interpretations of the Federal Farm Loan Act, and will be discussed at subsequent passages of this brief.

1. Whether consideration for the note and mortgage had passed from the Federal land bank upon payment of the bank's check for the amount of the loan evidenced and secured thereby, such check having been duly indorsed by the payees who were respectively the maker and indorser of the mortgage note.

2. Whether, under the Federal Farm Loan Act, a national farm loan association is the agent of the Federal land bank for the transmission of the proceeds of a loan to the borrower.

3. Whether a national farm loan association, in receiving and handling sums transmitted by a Federal land bank in connection with the closing of a mortgage loan, receives and handles such sums for the account of the borrower or as a "public agent."

4. Whether a mortgage executed and delivered to a Federal land bank is impaired or invalidated due to the loss of the sums transmitted in consideration of such mortgage, while such sums are in the hands of the indorsing national farm loan association, which has receipted for the same.

III. Payment of Bank's Check as Consideration for Mortgage.

Question 1:

Whether consideration for the note and mortgage had passed from the Federal land bank upon payment of the bank's check for the amount of the loan evidenced and secured thereby, such check having been duly indorsed by the payees who were respectively the maker and indorser of the mortgage note.

If the Federal Farm Loan Act were not involved in this case, and the parties were ordinary mortgagor and mortgagee, there would be no question that consideration had passed for the note and mortgage, in view of the facts above stated. It is undisputed that a check was delivered by the mortgagee, payable to the order of the mortgagor and another, in the full amount requisite to furnish consideration for the mortgage. It is admitted that this check was duly indorsed, the mortgagor's name having been indorsed thereon by her authority, and the co-payee's having been indorsed in person. It is admitted that subsequent to such indorsement, the check was placed on deposit by the holder thereof, and the proceeds thereof duly transmitted to the depositary bank for the account of such depositor.

It is unnecessary to review the authorities which hold that where a check is delivered to a creditor, although without any agreement or consent on his part to receive it as absolute payment, and such check is in fact paid in due course, the debt is discharged as of the date the check was received; also that the negotiation of a check by the payee to whom it has been delivered, or the deposit of it in a bank as money, renders such check an absolute payment and discharges the original indebtedness. These principles, with

respect to transactions by parties operating under general rules of law, are undisputed, and it is deemed unnecessary to cite authorities in support thereof.

The decision that consideration had not passed for the mortgage in suit is based apparently upon the proposition that the Federal Farm Loan Act, by its terms, establishes special rights and liabilities as between the parties to this mortgage, and removes the question of consideration from the operation of the general law.

In subsequent portions of this brief, we shall discuss the provisions of the Federal Farm Loan Act which are applicable to the case at bar, in an endeavor to show that the Act does not operate to alter this rule, in the case of the delivery of consideration for a mortgage executed in favor of a Federal land bank.

IV. History of Federal Farm Loan Act.

1. *Circumstances Attending Passage of Act.*

It is believed that a brief review of the history and circumstances surrounding the adoption of the Federal Farm Loan Act will aid the Court in getting a complete picture of the origin and purpose of the Act, which in turn will be of assistance in interpreting particular provisions thereof.

For a number of years prior to the passage of the Act (1916) there had been an insistent demand that Congress should provide a rural credit system which would supply the necessary capital for agricultural development. Agriculture as an industry was in need of capital at low rates of interest in order to keep pace with other lines of business that were well organized and well financed. The ordinary commercial banking institutions were willing to extend credit to individual business concerns properly or-

ganized and with credit of a known quantity, with reasonable assurance that the obligations would be met. Agriculture, on the other hand, was conducted in most cases by individual farmers, each in his individual way, and each agricultural loan presented a distinct problem for the commercial banker which had to be investigated separately. Consequently the problem which presented itself to Congress was how to provide a means of furnishing the necessary credit on a large scale to farmers on the security of farm mortgages.

The papers and periodicals of the day were devoting much space to the rural credit systems of Europe. In 1913 the United States Commission, appointed by the President, in conjunction with a commission working under the auspices of the Southern Commercial Congress, made a tour of Europe for the purpose of studying these systems. The report of the United States Commission was published as Senate Document No. 204, 63d Congress, 1st session. At the close of the 63d Congress, a joint committee of the House and Senate was appointed to make further investigation of the subject and to report back a bill for the consideration of the 64th Congress. The report of this committee, Document No. 494, 64th Congress, contains a draft of a bill recommended by the committee which, in the main, is the Federal Farm Loan Act as we know it.

The bill recommended in this report was introduced in each House, and referred by each House to its Banking and Currency Committee, and the reports of the respective committees were substantially similar.

The plan incorporated in the bill, which became the Federal Farm Loan Act, is the establishment of a system of twelve cooperative farm mortgage banks, in order to provide a medium through which investors could purchase

bonds collaterally secured by large numbers of farm mortgages.

The "primary considerations in devising such a system," as stated in the Report of the Senate Committee on Banking and Currency (Report No. 144, 64th Congress, 1st Session), are:

"1. Absolute safety and attractive income to the investor.

"2. Low interest rates, long-term mortgages, and amortization payments for the farmer.

"3. Low cost of administration.

"4. Simplicity of organization and operation.

"5. Adaptability to every part of the country.

"6. Stimulation to the cooperative spirit."

With respect to this plan, the report of the Senate Committee states in part:

"Difficulty of Securing Capital.

"The farmer applies to the nearest bank for a loan and offers his farm as security. The banker makes excuses. He doesn't know the farmer; he doesn't know the value of his farm; he doesn't like to tie his demand deposits up in long-term loans; his commercial customers, who carry a substantial line of deposits, have the first claim. These excuses are well founded."

"Money Seeking Long-term Investment.

"Of money seeking long-term investment at low rates there is an abundant supply. It includes the ordinary savings of the schoolteacher, clerk, minister, and wage earner; the proceeds of life insurance in the hands of widows and other beneficiaries; funds belonging to estates, minors, and wards in chancery in the hands of

executors, guardians, and trustees; funds of insurance companies, benevolent orders, and societies of various kinds; endowments of colleges, hospitals, museums, and other institutions; and assets to be invested by receivers, courts, and governments. The aggregate of these is enormous. They require an investment that is absolutely safe and reasonably liquid in the sense that it may be converted into cash upon moderate notice; in other words, that it may find a ready market. A safe investment of this character need not carry a high rate of interest."

"Government control of the system is assured by the creation of a non-partisan Federal farm-loan board, consisting of the Secretary of the Treasury and four members appointed by the President for terms of 8 years each and paid from the Public Treasury. (Section 3.)

"Loans are made to farmers by 12 or more Federal land banks, each operating in a separate district and having a capital of not less than $500,000. If the full amount is not subscribed from private sources, the Government subscribes for as much as may be necessary to make up the required amount. Provision is made for returning the Government subscription after the land banks are firmly established. (Sections 4 and 5.)

"In order to secure intimate touch with the borrowers, it is provided that the land banks shall make loans to farmers through local associations of borrowers, called national farm loan associations. These associations do not conduct a banking business. Their operations are very simple. They admit members who desire to borrow; their directors and loan committees pass on the value of the security and the character of the borrower. Every borrower takes stock in the farm loan association to the amount of 5 per cent of the face of his loan. This amount is subscribed by the association to the stock of the land bank, thus providing for a capital proportionate to the amount of loans, approximating 1 to 20." (Sections 7 and 8.)

The following statement is found in the report of the House Committee on Banking and Currency (Report No. 630, 64th Congress, 1st Session):

> "It will be observed that the national-farm loan associations and the Federal farm-land banks *constitute a system of rural credit essentially cooperative.* Every borrower through a farm-loan association must be a stockholder in that association to the extent of 5 per cent of his loan. Incidentally it may be mentioned that his stock subscription need not be paid in cash but may be included as a part of his loan. * * * Except for the stock held by borrowers through agents, the entire stock of the land banks will ultimately be held by the various national farm-loan associations. * * * There is every assurance that the farmers will avail themselves of the opportunity to build up this great cooperative system. The possibilities of cooperation among farmers in the United States can be estimated from what has been already accomplished." (Italics added.)

Recent Developments.

Subsequent to the entry of the final judgment in this cause the Federal Farm Loan Board was abolished and its functions and duties were transferred to the Farm Loan Commissioner, subject to the jurisdiction and control of the Farm Credit Administration, pursuant to an Executive Order of the President of the United States (No. 6084), dated March 27, 1933, effective sixty days thereafter, which order reads in part as follows:

> "The functions of the Secretary of the Treasury as a member of the Federal Farm Loan Board, and the offices of the appointed members of the Federal Farm Loan Board, except the office of the member designated as farm loan commissioner, are abolished, and all the powers and functions of the Federal Farm Loan Board

> are transferred to and vested in the farm loan commissioner, subject to the jurisdiction and control of the Farm Credit Administration as herein provided."

Subsequent to the effective date of the Executive Order just above referred to, the name of the office of Farm Loan Commissioner was changed to that of Land Bank Commissioner by an Act approved June 16, 1933 (Sec. 80, Farm Credit Act of 1933).

In view of the fact that the Farm Loan Act has not been rewritten since the issuance of the Executive Order of March 27, the passage of the Emergency Farm Mortgage Act, approved May 12, 1933, and the Farm Credit Act of June 16, 1933, we have not undertaken to substitute the name of the Farm Credit Administration for the Farm Loan Board wherever the latter is referred to in the Federal Farm Loan Act. Therefore, for the purposes of this case, and for the convenience of the Court, reference will be made to the Federal Farm Loan Board rather than to the Farm Credit Administration.

V. Pertinent Provisions of Federal Farm Loan Act.

Mention has been made earlier in this brief to the fact that the mortgage in suit was executed to secure a loan "made through a national farm loan association". The decision of this case turns upon an interpretation of these words, which are used in the Federal Farm Loan Act, and which summarize the various provisions relative to loans of this character.

1. *Provisions Relative to Federal Land Banks.*

It is provided in Section 14 of the Act (12 U. S. C., Section 791) that—

> "No Federal land bank shall have power— . . . To loan on first mortgage except through national farm

loan associations as provided in Sections 7 and 8 of this Act, or through agents as provided in Section 15 [or direct to borrowers as provided in Section 8]."

The words in brackets are added to this section by the Act of March 4, 1933, which made provision for direct loans to borrowers in circumstances which did not obtain in the instant case, and would not have been applicable thereto even if the amendment had been in effect at the time this case arose.

The Federal Farm Loan Act also provides, at Section 13 (12 U. S. C., Section 781), that—

"Every Federal land bank shall have power, subject to the limitations and requirements of this Act . . .

"To invest such funds as may be in its possession in the purchase of qualified first mortgages on farm lands situated within the Federal land bank district within which it is organized or for which it is acting."

2. *Provisions Relative to National Farm Loan Associations.*

Sections 7 and 8 of the Act (12 U. S. C., Sections 711-745) relate to the organization and operation of national farm loan associations, and to the closing of loans through such associations. Section 7 provides that ten or more natural persons who are the owners, or about to become the owners of farm land qualified as security for a mortgage loan under the Act, may unite to form a national farm loan association, which association may be granted a charter by the Federal Farm Loan Board. After the granting of a charter, a national farm loan association is a corporation having limited powers, as prescribed by the Act.

The management of its affairs is in the hands of a board of directors elected by the member shareholders; and its officers comprise a president, a vice president and a secretary-treasurer, chosen by the directors. All officers and

directors except the secretary-treasurer must be members of the association. Membership is confined to natural persons who are borrowers on farm land mortgages from the Federal land bank of the district.

The secretary-treasurer of a national farm loan association is its chief executive officer, under section 7 of the Act (12 U. S. C., Section 714). It is his duty "to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all funds received for their account from the Federal Land Bank upon first mortgage as in this Act prescribed* [italics ours], and to meet all other obligations of the association subject to the orders of the board of directors and in accordance with the by-laws of the association"; and, "acting under the direction of the national farm loan association, to collect, receipt for and transmit to the Federal Land Bank payments of interest, amortization installments or principal arising out of loans made through the association." He is the custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association. He is required to furnish a suitable surety bond for the proper performance of the duties imposed upon him under the Act, to make quarterly reports to the Federal Farm Loan Board, to furnish to the Board information regarding the condition of the association, to carry out all duly authorized orders of the Federal Farm Loan Board, to assure himself that the loans made through the association of which he is an officer are applied to the purpose set forth in the application of the borrower as approved, to report to the land bank of the district any failure of a borrower to comply with the terms of his application or mortgage, and to ascertain and report to the

bank the amount of any delinquent taxes on land mortgaged to the bank.

Among the enumerated powers of a national farm loan association (Section 11, Federal Farm Loan Act; 12 U. S. C. Section 761) are:

> "First. To indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal Land Bank of its district.
>
> "Second. *To receive from the Federal Land Bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under Section* 12 *of this Act.* (Italics added.)
>
> "Third. To fix reasonable initial charges to be made against applicants for loans and to borrowers in order to meet the necessary expenses of the association: *Provided,* that such charges shall not exceed amounts to be fixed by the Farm Loan Board, and shall in no case exceed 1 per centum of the amount of the loan applied for".

Section 7 (12 U. S. C. Section 720) provides that—

> "Upon receipt of its charter such national farm loan association shall be authorized and empowered to receive fro mthe Federal land bank of the district sums to be loaned to its members under the terms and conditions of this Act."

Section 7 further provides (12 U. S. C. Section 721) that—

> "*Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district* it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land

bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired, and it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued." (Italics added.)

Section 8 provides (12 U. S. C. Section 733) that—

"No persons but borrowers on farm land mortgage shall be members or shareholders of national farm loan associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each $100 of the face of his loan, or any major fractional part thereof. Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

Section 25 of the Act (12 U. S. C. Section 921) provides as follows:

"If there shall be default under the terms of any indorsed first mortgage held by a Federal land bank

> under the provisions of this Act the national farm loan association through which said mortgage was received by said Federal land bank shall be notified of said default. Said association may thereupon be required, within 30 days after such notice, to make good such default, either by payment of the amount unpaid thereon in cash or by the substitution of an equal amount of Federal farm loan bonds, with all unmatured coupons attached."

Under the last quoted provision it is apparent the association and its members are joint obligors for each mortgage loan "made through a national farm loan association"; and that the association is not a disinterested "public agent" acting as "intermediary," but a party to the transaction, having secured for its member a loan from the Federal land bank and having become absolutely liable with its member for the repayment of such loan.

VI. Effect of Lower Court's Interpretation of Federal Farm Loan Act.

The Supreme Court of North Carolina treated this case as if the land bank had paid the loan funds to the national farm loan association, without including the borrower as a co-payee of the check. Apparently the court regarded the inclusion of the borrower's name as of no substantive importance, and determined at the outset that the effect of the transaction was a delivery to the association. The remainder of this brief, therefore, will be addressed to the merits of the court's decision, based upon the premise which it adopted.

The court below placed the following interpretation upon the applicable provisions of the Federal Farm Loan Act, which have been reviewed above:

> "No loan can be made by a Federal Land Bank directly to the borrower. When the application for a

loan has been received by a Federal Land Bank, through a National Farm Loan Association, *the Act requires that funds to close the loan shall be transmitted by the land bank to the association, for disbursement to the borrower.*

"Under the provisions of the Act, *the National Farm Loan Association is a public agent, designated by the Act as intermediary* between the bank and the borrower." (Italics added.)

Analysis of the lower court's decision leads to the inevitable conclusion that it must have regarded the association as agent of the bank, for the purpose of disbursing the loan funds in question. If the Court's language be taken literally, without this interpretation of its effect, it would mean that the association was regarded as an irresponsible entity, acting as agent for neither party, to which large sums of money must be paid over by the Federal land bank. This would be an anomalous situation, which cannot be taken as having been the intention of the Congress.

We shall endeavor in subsequent portions of this brief to show that, when a Federal land bank pays over to a national farm loan association funds for the account of its members upon farm mortgage security, such payment constitutes a valid and complete consideration for the mortgage executed in favor of the bank by the association's member. In this connection, it should be stated that we do not concur with the view expressed by the Supreme Court of North Carolina that payment of consideration for a mortgage loan must necessarily be made through a national farm loan association, and that we regard such provision as an authorization rather than a mandate. Since, however, this question is not in issue in the case, no argument need be addressed thereto.

VII. The National Farm Loan Association Is Not the Bank's Agent.

Question 2

Whether, under the Federal Farm Loan Act, a national farm loan association is the agent of the Federal land bank for the transmission of the proceeds of a loan to the borrower.

It has been held very emphatically by a number of State courts that neither the association nor its secretary-treasurer is an agent of the Federal land bank in negotiating and closing a loan. Those cases are reviewed at this point.

In the case of *Bjorkstam* v. *The Federal Land Bank of Spokane*, 244 Pac. 981, decided by the Supreme Court of Washington, Bjorkstam sold a tract of land to Stewart, who paid Bjorkstam part of the purchase price in cash and executed a purchase money mortgage for the balance. Stewart applied to the land bank through a national farm loan association for a loan with which to pay Bjorkstam. The loan was approved for $3,000, and Bjorkstam agreed that he would accept that amount and take a second mortgage for $1,250 for the balance due him. The secretary-treasurer of the association notified Bjorkstam that Stewart's application had been approved, and requested Bjorkstam to call upon him and satisfy the purchase money mortgage. Relying upon the assurance of the secretary-treasurer that he would receive the $3,000 out of the proceeds of the loan, Bjorkstam delivered to the secretary-treasurer a satisfaction of his purchase money mortgage. The bank sent a check for the proceeds of the loan, payable jointly to the secretary-treasurer of the farm loan association and Stewart, the borrower. The check was indorsed by both payees and deposited

in the secretary-treasurer's official account. The secretary-treasurer thereafter appropriated the money to his own use. Thereafter, Bjorkstam brought his action to have the bank's mortgage held inferior to his purchase money mortgage for the sum of $3,000, and to have his mortgage reinstated as a first and prior charge upon the land.

The Supreme Court of Washington, in its opinion in the case, discussed the provisions of the Federal Farm Loan Act with special reference to the relation among themselves of a borrower, a Federal land bank and a national farm loan association. It said:

> "In case an application for a loan is accepted, the association through whom the application comes is required to indorse the note which the applicant gives covering the repayment of the loan. *In other words, the association becomes a joint borrower with the applicant*, and the company requires the bank to transmit the money loaned by draft payable jointly to the secretary-treasurer of the association and the applicant. It was so done in this case, the respondent bank sending its draft from its principal place of business in Spokane payable jointly to Monterieffe Cameron, Secretary-Treasurer of the Association, and the defendant Stewart. The Federal Land Bank has no authority over any of the associations or their officers, has no voice in their selection, and cannot discharge them. The secretary-treasurer of each association is chosen solely by the directors thereof, does not receive any compensation from the Federal Land Bank, but is paid solely from the funds of the association. It would appear, therefore, that the Federal Land Bank and the National Farm Loan Association are separate and independent bodies. *It also appears that the Farm Loan Association is the agent of the borrower for that purpose.*"
>
> "Plaintiff bases his right of recovery against respondent [the Federal Land Bank] on the contention that Cameron, in taking the satisfaction of the $4,250

mortgage and placing the same of record, was acting as agent of the bank, and therefore plaintiff claims the right to have his mortgage reinstated as a prior lien to the one held by respondent from Stewart."

"*Primarily, for the purpose of procuring and transacting the matters concerning the Federal farm loan, Cameron was undoubtedly the agent of the defendants Stewart [the borrower]. He was not in any sense the agent of respondent bank. He was a public agent whose authority parties dealing with him in that capacity were bound to know.*" (Italics added.)

The court held that as between Bjorkstam and the land bank, the bank's mortgage was a first lien on the land, and that as between Bjorkstam and the borrower, Bjorkstam made the secretary-treasurer his agent to pay the $3,000 over to him.

"When Cameron embezzled the money he embezzled the money of the plaintiff [Bjorkstam]. * * *. But in this case, while Cameron was the agent of the Stewarts, the borrowers, his transaction with the borrowers had ceased. He had become, for a limited purpose, the agent of the plaintiff. As such, he defaulted."

"We therefore conclude that the maxim stated in *Wiswell* v. *Beck*, (*supra*), and *Kucher* v. *Scott*, (*supra*), should apply to the plaintiff in this case, he having put it in the power of his agent for a limited purpose to defraud another. See, also, *Johnson* v. *Milwaukee and Western Inv. Co.*, 64 N. W. 1100, 46 Neb. 480; *Campbell* v. *Gowans*, 100 P. 397, 35 Utah 268, 23 L. A. *bell* v. *Gowans*, 100 P. 397, 35 Utah, 268, 23 L. R. A. (N. S.) 414, and case note, 19 Ann. Cas. 660; *Harrison Nat. Bank* v. *Austin*, 91 N. W. 540, 65 Neb. 632, 59 L. R. A. 294, 101 Am. St. Rep. 639."

In that case the court referred also to the fact that the national farm loan association through which the loan is made is required to indorse the note given by the borrower

to the Federal land bank. In that connection the court said: "In other words, the association becomes a joint borrower with the applicant." The court held also that, in drawing a check for the proceeds of a loan, payable jointly to the borrower and the secretary-treasurer of the indorsing association, the bank did not make the secretary-treasurer its agent.

The case of *Holvick* v. *Black*, 221 N. W. 71, 57 N. D. 270, involved a contest over the superiority of the lien of a mortgage held by the Federal Land Bank of St. Paul. In its opinion the Supreme Court of North Dakota followed the Washington court in the Bjorkstam case (*supra*) stating:

> "There is no dispute but what McGovern [the secretary-treasurer] was intrusted by Troxel [the borrower] to take charge of the loan proceedings with the Federal land bank for the clearing of the title and the discharge of the mortgage. In other words, McGovern was made the general agent of Troxel for this purpose. Hence the latter is bound by whatever his agent did within the scope of his authority."
>
> "It is the claim of the plaintiff that when the Federal land bank sent its draft payable to McGovern [the secretary-treasurer] and Troxel, it thus made McGovern its agent to wind up the deal and to disburse the money to those entitled thereto."

After discussing the facts in the case, the court expressed the conclusion that they did not "show that McGovern was in any sense the agent of the land bank"; and that "the only dealing it had with McGovern [was] as the agent of Troxel is the furnishing of the money, and *the making of the draft payable to both McGovern and Troxel does not make McGovern its agent.*" (Italics added.)

In *Whitaker* v. *Fulton*, 17 S. W. (2nd) 1079, decided by the Court of Civil Appeals of Texas, it was sought to have

a land bank mortgage canceled and declared void, because the secretary-treasurer of the association had knowledge of an alleged prior "simulated conveyance" of certain land upon which the Federal Land Bank of Houston had made a loan. The court said:

> "It is claimed by the appellant that the Grayson National Farm Loan Association, through R. S. Fulton, its secretary, had actual information of the simulated sale, and their knowledge was legally imputable to the Federal Land Bank. We hold otherwise. *Bjorkstam* v. *Federal Land Bank*, 138 Wash. 456, 244 P. 981."

The case of *The Federal Land Bank of Omaha* v. *Omaha National Bank of Omaha*, 225 N. W. 471, decided by the Supreme Court of Nebraska, involves facts similar to the facts of the case now under consideration, the only essential difference being that in the Omaha case it was alleged that the indorsements of borrowers on checks sent out by the bank payable jointly to the secretary-treasurer and borrowers were forged by the secretary-treasurer. The Federal Land Bank of Omaha sued the Omaha National Bank, alleging that checks were drawn by it on the Omaha National Bank, each payable to the order of two persons, viz., "another" and "N. C. Klein, Sec.-Treas.," and upon which the secretary-treasurer had forged the indorsement of the joint payees, had been improperly paid on the forged indorsement by the Omaha National Bank and charged to the account of the land bank. The Omaha National Bank answered alleging:

> "* * *" that it was the intention of all parties to the transaction, as well as a duty enjoined by law, that said N. C. Klein, as secretary-treasurer of the Sisseton National Farm Loan Association, should collect each of said checks and deposit the proceeds thereof in the Guaranty State Bank of Sisseton, South Dakota, duly desig-

nated in the proper manner by Sisseton National Farm Loan Association as the legal depository of such funds pending their distribution to the parties entitled thereto; and that such deposit was in each of the cases set forth in plaintiffs' petition duly made by said N. C. Klein, as secretary-treasurer of said Sisseton National Farm Loan Association, in the manner required by law."

The court, after discussing the provisions of the Federal Farm Loan Act creating the Federal Farm Loan Board, the Federal Land Banks, and the National Farm Loan Association, as separate entities, said:

"Applicants for farm loans are required to be members of the association and subscribers to its capital stock. Each association elects its own board of directors; each member or borrower * * * having a voice in the selection. This board of directors in turn chooses the officers of the company, including a secretary-treasurer, who is the only paid officer of this corporation. His compensation is determined by the board of directors and he is paid from the funds of the association.

"Section 741 [of 12 U. S. C.] provides: 'Any person whose application for membership is accepted by a national farm loan association shall be entitled to borrow money on farm land mortgage upon filing his application in accordance with section 733 and otherwise complying with the terms of this chapter whenever the Federal Land Bank of the district has funds available for that purpose, unless said land bank or the Federal Farm Loan Board shall, in its discretion, otherwise determine.'

Section 761 of this chapter [of 12 U. S. C.] provides: 'Every national farm loan association shall have power:

" 'First. * * * To indorse, and thereby become liable for the payment of, mortgages taken from its

shareholders by the Federal Land Bank of its district. * * *

"'Second. * * * To receive from the Federal Land Bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of first mortgages qualified under section 771 of this chapter.'

"Another requirement of this Act is [Section 722]:

"'Funds transmitted to farm loan associations by Federal Land Banks to be loaned to its members shall be in current funds, or farm loan bonds, at the option of the borrower.'

"Section 714 of this Act [12 U. S. C.] provides: 'It shall be the duty of the secretary-treasurer of every national farm loan association to act as custodian of its funds and to deposit the same in such bank as the board of directors may designate, *to pay over to borrowers all sums received for their account from the Federal Land Bank upon first mortgage as in this chapter prescribed,* and to meet all other obligations of the association, subject to the orders of the board of directors and in accordance with the by-laws of the association. It shall be the duty of the secretary-treasurer, acting under the direction of the national farm loan association, to collect, receipt for, and transmit to the Federal Land Bank payments of interest, amortization installments, or principal arising out of loans made through the association. He shall be the custodian of the securities, records, papers, certificates of stock, and all documents relating to or bearing upon the conduct of the affairs of the association.' (Italics ours.)

"It is an admitted fact in the record that N. C. Klein was duly elected and qualified as secretary-treasurer of the Sisseton National Farm Loan Association and that he, duly qualified, was acting as such during the period covered by the transactions in suit; that the Guaranty State Bank of Sisseton, South Dakota, had been duly designated by the directors of the Sisseton National Farm Loan Association as its depository in which all of its funds and all funds received by it were

required to be deposited, and that the State bank last named was such legal depository at the time all the transactions were had, and that each of the checks which are in suit represent proceeds of loan made to members of his association and through it had been received by N. C. Klein, secretary-treasurer, and had been by him duly deposited in the Guaranty State Bank of Sisseton, in strict accordance with the directions of such board of directors, the only irregularity being that he had failed in each case to obtain the indorsement of the person with whom, in each instrument, he was named as copayee.

"It thus appears that whatever misappropriation of funds may have been made it was made after the deposit had been completed, as directed by the board of directors of the local association, and that the association, either in its own name, or in the name of 'N. C. Klein, as secretary-treasurer,' had been duly credited with such deposit on the books of the Guaranty State Bank of Sisseton.

"The provisions of the statutes quoted fairly disclose the legislative intent to be that, when farm loans were made, funds arising therefrom should be transmitted by the Federal land banks to their several farm associations and to be by the latter disbursed to the members making the loans.

"Indeed, section 772, appears to make this duty mandatory to transmit such funds in 'current funds' or farm loan bonds. It thus must be conceded that when the deposit was made in the bank to the credit of 'N. C. Klein, secretary-treasurer' of the Sisseton National Farm Loan Association, the course of business intended by those participating therein and contemplated by the terms of the statute had been duly completed, the only irregularity appearing being that the mortgagor making the loan had not subscribed his name as an indorsement on the instrument which transmitted the 'current funds,' as insisted on by the plaintiffs. Under these circumstances the rule appears to be: 'As a bank is authorized to pay only to the person designated by

> the depositor, it cannot charge against the depositor's account an amount paid by it on a forged indorsement of the depositor's check, unless such payment is properly attributable to the negligence or other fault of the depositor, or unless the money has actually reached the person whom the drawer intended should receive it, or the drawer himself.' 7 C. J. 686, Sec. 414.
>
> "So far as the present transactions are concerned, it must be conceded that the terms in which the legislative intent is expressed, as well as the acts of the parties, and the established course of business disclosed by the record, indicate the person the drawer of these checks in controversy actually intended to receive the money was 'N. C. Klein, as secretary-treasurer,' representing the Sisseton National Farm Loan Association, to be by him distributed as directed. That was the plain purpose of all concerned. It cannot be gainsaid but that these funds and the proceeds of each check in suit actually came into possession of the Sisseton National Farm Loan Association through the act of its secretary-treasurer in the exercise of the powers of his office, and was by him deposited in the depository duly designated as such in the manner contemplated by the Act."

The Supreme Court of Georgia in a well-considered opinion in the case of *The Federal Land Bank of Columbia* v. *Shingler et al.*, 174 Ga. 352, 162 S. E. 815, at 823, said that under the Federal Farm Loan Act the Federal Farm Loan Board, the Federal land banks, and the national farm loan associations are three separate agencies with distinct and independent functions, and that—

> "the local Farm Loan Associations do not derive their charters or powers from the Federal Land Banks. Their particular function is to receive applications for loans, all of which applicants are required to become members of the association and to subscribe to its capital stock; and under the Federal Farm Loan Act a secretary-treasurer of a local farm loan association is not an agent of the Federal Land Bank which makes

> the loan, but is a public agent whose authority parties dealing with him in this capacity are bound to know. *Bjorkstam* v. *Federal Land Bank*, 244 Pac. (Wash.) 981."

In the case of *The Federal Land Bank of Berkeley* v. *Warner*, which is now pending before this Court on petition for writ of certiorari to the Supreme Court of the State of Arizona, the following statement was made by the Arizona court on a point not involved in the petition here, in an opinion rendered July 1, 1933:

> "The negotiations for loans are not carried on between the bank and the borrower but between the bank and a local farmers' association *representing the borrower*." (Italics added.)

In its ruling respecting the relations between borrower, bank and association, the court followed the Supreme Court of North Dakota, in the case of *Byrne* v. *Federal Land Bank of St. Paul*, 237 N. W. 797, which held that the association is not the agent of the Federal land bank.

In the case of *McFaddin* v. *Bland*, 147 S. C. 27, 144 S. E. 592, relied on by respondent, it was held by the Supreme Court of South Carolina that under the facts, an attorney who embezzled the proceeds of a Federal land bank loan was the agent of the bank. In this case the attorney was selected by the borrower from a list of abstractors acceptable to the bank for the preparation of her abstract of title. A check for the amount of the loan, payable to the joint order of the borrower and the secretary-treasurer of the indorsing association was sent forward to the abstracting attorney, who obtained their indorsements on the check, cashed it, and embezzled the proceeds. The court held that—

> "the indorsement of said check by the payee, while necessary, was simply formal in that transaction, for

> the money was to be disbursed by O'Brian [attorney]. * * * The Federal land bank relied on him to see that the record was clear and the loan closed, and the money applied to the indebtedness of Mrs. McFaddin. O'Brian was required to follow the directions of the Federal land bank, and not the directions of the plaintiff * * *."

Without conceding the correctness of this decision on the facts presented, we submit that the case was not decided under the provisions of the Federal Farm Loan Act relative to the relation between a borrower, his association and the bank under the provisions of that Act.

There is, however, in the McFaddin case a strong dissenting opinion by Mr. Justice Cochran, in which he points out the provisions of the Act and the relations of the various parties under it. In the dissenting opinion Mr. Justice Cochran calls attention to the case of the *Atlantic Life Ins. Co.* v. *Rowland*, decided by the U. S. Circuit Court of Appeals of the Fourth Circuit, 22 Fed. 2d, 126. In that case it was held that where the insurance company designated O'Bryan, the same attorney involved in the McFaddin case, to prepare the necessary papers, and to do the other things requisite to close the loan, the loss must fall upon the borrower who had indorsed the check and turned it over to the attorney to pay off a prior mortgage.

It is clear from the foregoing authorities that in every instance in which the courts have had occasion to pass upon the question, they have held that the national farm loan associations and their respective secretary-treasurers are not agents of the Federal land bank and that the bank is not bound by transactions between them and borrowers in connection with the closing of loans. The correctness of these decisions will be manifest when all of the provisions of the Federal Farm Loan Act are considered in their proper relation one to the other.

All applicants for loans, and all borrowers, have constructive notice of all the terms and provisions of the Federal Farm Loan Act, which expressly provides that the secretary-treasurers of the associations of which they become members and shareholders, are authorized to receive proceeds of loans from the Federal land bank for their account and to pay the same to them. In this case the borrower, in her application for the loan expressly applied for the same through a national farm loan association "pursuant to the provisions of the Federal Farm Loan Act."

Under Sections 7 and 11 of the Federal Farm Loan Act (12 U. S. C., Sections 712 and 761), the borrower, and not the Federal land bank, pays the fee charged by the association in connection with its consideration of the loan application, and its part in the making of the loan; and the association from its funds compensates the secretary-treasurer for the services rendered by him.

Under the Act the national farm loan association is a separate and distinct corporation from the Federal land bank, over which the Federal land bank has no control. The Federal land bank has no voice in the selection of the secretary-treasurer of the national farm loan association, no control over him and no right to remove him from office. In view of these facts, it can not reasonably be contended that Congress intended that the national farm loan association or its secretary-treasurer must be employed by the Federal land bank as its agent, or as an irresponsible "intermediary", for the purpose of paying loan funds to the borrower.

The proper and only reasonable construction of the Act is that Congress intended that in negotiating a loan, the association acts as the agent of the borrower. To construe the Act otherwise would not only be contrary to the fundamental principle of agency, that the principal has the sole right to select and control the agent as well as to terminate

the agency, but also would render unsafe the making of loans by Federal lank banks and the pledging of the mortgages securing the same as collateral to farm loan bonds issued and sold by the banks to investors.

Special attention is invited to Section 7 of the Federal Farm Loan Act (12 U. S. C., Section 721), which provides that "*Whenever any national farm loan association shall desire to secure for any member a loan* on first mortgage from the Federal land bank of its district * * * ;" and to the following language of Section 7 of the Act (12 U. S. C., Section 714): "It shall be the duty of the secretary-treasurer of every national farm loan association * * * *to pay over to borrowers all sums received for their account* from the Federal land bank upon first mortgage *as in this chapter prescribed* * * *." (Italics added.)

It is submitted that by the use of the words "*to secure for any member a loan*" Congress intended that the association should act as the agent of its members in connection with applications for loans from the Federal land bank. The words "*for their account,*" as used in the Act, should be construed to mean that when the funds are received by the association they are received by the borrower, that the association, acting by its secretary-treasurer, is the agent of the borrower for that purpose, that immediately upon delivery of the loan funds by the bank to the association the transaction is complete as between the bank and the borrower, and there is consideration for the note and mortgage.

The validity of a payment made, pursuant to the authorization or consent of a creditor, by a deposit with a third party for the account of the ultimate payee, has been passed upon by the courts under general and well-settled rules of law, which, it is submitted, do not differ from the rule established under the Federal Farm Loan Act.

This Court, in *Hinkle* v. *Wanzer et al.*, 58 U. S. (17 How.) 353, 15 L. Ed. 173, stated:

> "Where a creditor, *in whose behalf* a stake has been deposited by the debtor with a third person, receives notice of that fact from the stockholder, the notice will convert the stockholder into an agent for, and debtor to, the creditor" (Italics added). See also: *White* v. *Miners' Nat. Bank*, 102 U. S. 658, 661, 26 L. Ed. 250.

In *Merriam* v. *Haas*, 3 Wall. (70 U. S.) 687, 18 L. Ed. 29, the loan secured by the mortgage sought to be foreclosed was negotiated in some part through the banking house of Caldwell and Company, of St. Paul, where the defendant resided. The proceeds of the loan were remitted by the mortgagee to Caldwell and Company, which failed without having paid over all of the same to the mortgagor, the defendant. The sole issue before the court was for which of the parties Caldwell and Company held the proceeds of the loan at the time of their failure. The amount of the mortgage was $6,000, $4,000 of which was received by the mortgagor. The remaining $2,000, by stipulation, was to be advanced when the mortgagor should finish a building on the lot conveyed by the mortgage, and cause it to be insured for the benefit of the mortgagee. Upon completion of the building, the policy of insurance was delivered by the mortgagor to Caldwell and Company who were satisfied that the requirements regarding the completion of the building and the insurance thereof had been complied with, and thereupon Caldwell and Company drew a draft on the mortgagee, residing in Boston, for $2,000. The draft was honored by the mortgagee and Caldwell and Company received the money. The day after the draft was drawn by Caldwell and Company a credit for $2,000 was entered on their books in favor of the mortgagor and between that

time and eight days later, when Caldwell and Company failed, the mortgagor drew or received payment from Caldwell and Company of part of the $2,000. Upon these facts the court held that all of the $2,000, representing the amount in controversy, was held by Caldwell and Company at the time of their failure for the mortgagor and not for the mortgagee, that the mortgagor knew and consented to the credit which Caldwell and Company had given him, that the loss was his, and the mortgagee was entitled to foreclosure for the full amount of the mortgage.

It is submitted that even if the borrower had not been made a copayee of the check in this case, the payment of the check to the association would have constituted payment to her under the foregoing cases. Even in the case of a conditional payment, which does not exist here, such would have been the result, since the association was a joint obligor on the mortgage note. It appears to be the uniform rule that a conditional delivery to a party to a contract does not create an escrow. It was stated by this Court in the case of *Moss* v. *Riddle & Co.*, 9 U. S. 351, 358, 3 L. Ed. 123, 125, that:

> "It is admitted by the counsel in this case, that a bond cannot be delivered to the obligee as an escrow. But it is contended that where there are several obligees constituting a co-partnership, it may be delivered as an escrow to one of the firm. The court, however, is of opinion that a delivery to one is a delivery to all. It can never be necessary to the validity of a bond that all the obligees should be convened together at the delivery."

The authorities further hold that where delivery is made to a party to a contract, such delivery is absolute, and passes title to such party. The conditions and stipulations accompanying such delivery are held not to affect the title

but to be contractual obligations. In this connection it was stated by the Supreme Court of Missouri in the case of *Massman* v. *Holscher*, 49 Mo. 87, 89, that:

> "A note, as well as a deed, may be delivered as escrow, and the law of escrow is substantially the same in both cases. In either case it is necessary that the instrument in the first instance should be delivered to a stranger; that is, to a person not a party to the contract. Neither a note nor a deed can be delivered to the grantee or promisee to be held by him as an escrow."

Neither any particular provision of the Federal Farm Loan Act, the Act as a whole, nor the Reports of the Senate and House Banking and Currency Committees, hereinbefore mentioned, indicate that Congress intended that the national farm loan association would act as an agent for the Federal land bank in the making of loans to farmers. In a different connection, however, the Act authorizes the employment of associations as agents. Section 7 of the Act (12 U. S. C., Section 714) provides that:

> "It shall be the duty of the secretary-treasurer, *acting under the direction of the national farm loan association* (italics ours), to collect, receipt for, and transmit to the Federal land bank payments of interest, amortization installments, or principal arising out of loans made through the association."

This section must necessarily be read in connection with Subsection 3, Section 13 of the Act (12 U. S. C., Section 781, *third*), which provides that every Federal land bank—

> "shall have power, subject to the limitations and requirements of this Act * * * to empower national farm loan associations, or duly authorized agents, to collect and immediately pay over to said land banks the dues, interest, amortization installments, and

other sums payable under the terms, conditions and covenants of the mortgages and of the bonds secured thereby."

These sections of the Act indicate that unless the Federal land bank affirmatively authorizes a national farm loan association, and the association directs its secretary-treasurer, to collect the payments specified therein, neither the national farm loan association, nor its secretary-treasurer, would be acting as an agent for the Federal land bank in collecting payments. These are the only provisions of the Act which authorize a Federal land bank to employ a national farm loan association or its secretary-treasurer as an agent for any purpose. It will be noted, however, that it is within the discretion of the Federal land bank to select either the association or someone else as agent to make its collections.

Section 15 (12 U. S. C., Sections 801-808) is the only provision of the Act which refers to an agency for Federal land banks in the making of loans. Under this section the Federal land bank may make loans on farm lands through State banks and the other institutions therein specified as the agent for the land bank. In this instance the Federal land bank also has the power to select, with the approval of the Federal Farm Loan Board, the agent, and to terminate the agency. It is significant that Congress stated expressly that banks, and other institutions specified in Section 15 of the Act, may be appointed agents of a Federal land bank for the purpose of making loans to farmers but did not state that a national farm loan association might be so employed. It is submitted that the well established rule of construction, "*expressio unius est exclusio alterius,*" applies and, therefore, Congress intended that neither the national farm loan association nor its secretary-treasurer

should be considered an agent of the Federal land bank in connection with the making of a loan. On the contrary by the use of the words "for their account," in Section 7 (12 U. S. C., Section 714), it is clear that the draftsmen of the Act intended that the national farm loan association by its secretary-treasurer would act as agent for the borrower in receiving from the Federal land bank the proceeds of his loan.

At the time the borrower in this case authorized the secretary-treasurer of the association to endorse her name to the check representing the proceeds of the loan, made payable jointly to her and the secretary-treasurer, she had actual notice that the Act authorized the association and its secretary-treasurer to receive for her account the loan funds and to pay them to her, and that the funds were being transmitted by the bank to her in this manner. These facts present a situation virtually identical with that involved in the case of *Merriam* v. *Haas*, *supra*, and it is submitted that this Court's decision in that case is controlling in the case under consideration.

VIII. The National Farm Loan Association is a Cooperative Organization, Representing the Borrower, and is Not a "Public Agent."

Question No. 3

> Whether a national farm loan association, in receiving and handling sums transmitted by a Federal land bank in connection with the closing of a mortgage loan, receives and handles such sums for the account of the borrower or as a "public agent".

The Federal Farm Loan Act clearly shows that a national farm loan association is a corporate entity, separate and distinct from the Federal land bank. It is a cooperative

organization. Its cooperative character was emphasized by the Supreme Court of North Dakota in an opinion rendered in *Byrne* v. *Federal Land Bank of St. Paul* (N. D. 1931), 237 N. W. 797, wherein the court stated:

> "As we have pointed out, the principle involved in the act is cooperative in its nature. It is only through the cooperation of his neighbors, with their assistance and upon their recommendation and the pledge of their liability he can secure his loan. They pledge their faith and credit to aid him, and he pledges his faith and credit to aid them."

The Federal Farm Loan Act was passed at a time when great progress was being made in the organization of farmers' cooperatives. At that time, State laws were being enacted for the organization of associations of agricultural producers for the purpose of cooperative purchasing and marketing. The cooperative movement among farmers has been held by this Court to be for the promotion of their common interest (*Liberty Warehouse Co.* v. *Burley Tobacco Growers' Co-Operative Marketing Association*, 276 U. S. 71, 96; 72 L. Ed. 473, 485).

Depending upon the form of the marketing contract, the member of a cooperative marketing association either passes title to the produce which he delivers to the association at the time of the delivery thereof or makes the marketing association his agent with power to sell or pledge the produce delivered by him to the association. In either event, these marketing contracts have been upheld, and it can not be argued that the purchaser or pledgee of produce from the marketing association does not obtain title thereto when he pays the marketing association the purchase price thereof or makes loans thereon to the marketing associa-

tion, even though the marketing association does not, or is unable to, remit the proceeds of the sale or pledge, less its expenses and charges, to the member (*Washington Cranberry Growers' Association* v. *Moore* (Wash.), 201 Pac. 773; *Poultry Producers* v. *Barlow* (Cal.), 208 Pac. 93; *Northern Wisconsin Co-Op. etc.* v. *Bekkedal* (Wis.), 197 N. W. 936; *Tobacco Growers' Co-Op. Asso.* v. *Battle* (N. C.), 121 S. E. 629).

Similarly, the farmer desiring a loan under the provisions of the Federal Farm Loan Act, delivers his note and mortgage to the Federal land bank through the national farm loan association, a cooperative institution of which he is a member, for loan funds procured by the Federal land bank by the issuance and sale of its bonds to the investor collaterally secured by the note and mortgage, and under the Act the payment of the loan funds by the Federal land bank to the national farm loan association constitutes payment to the borrower and affords consideration for the note and mortgage as between the borrower and the Federal land bank, regardless of whether the national farm loan association does, or is able, to pay the same to the borrower.

Notwithstanding the well established principle that a cooperative association represents its members, and acts as their agent in performing services or obtaining credit for them, the court below held that the particular type of cooperative with which we are now dealing, *i. e.*, a national farm loan association, must be regarded as a "public agent." The borrower contended that the association did not act for her and as her representative, in negotiating for this loan and receiving the proceeds thereof. The borrower relied upon the statement made by the Supreme Court of Washington in the Bjorkstam case (*supra*), that the secretary-treasurer "is a public agent whose authority

parties dealing with him in that capacity are bound to know."

We doubt whether the Washington court in the statement above quoted, intended to refer to the secretary-treasurer as a public official. On the contrary, the reasoning and conclusions set out in the court's opinion clearly indicate that the secretary-treasurer was regarded as an agent of those who deal with him, and who by such dealing make him their agent, and that the duties and powers of the secretary-treasurer are fixed by law, and that such persons are bound to take notice of those duties and powers.

Let us assume, however, that the lower court was correct in holding that the classification "public agent" may be deemed to include a national farm loan association and its secretary-treasurer. As we have previously shown, the association is expressly empowered by the Federal Farm Loan Act (12 U. S. C. Section 720) "to receive from the Federal land bank of its district sums to be loaned to its members under the terms and conditions of this Act." Other provisions of the Act, authorizing the Federal land bank to deliver loan funds to an association, and authorizing the association to receive the same, have been set forth earlier in this brief. It is apparent from these provisions that in paying such funds to the associaton, the Federal land bank did so in accordance with a procedure authorized by the Act. If, therefore, the association or its secretary-treasurer was a public agent, payment to it was made pursuant to statutory authorization; and under the rule of law so familiar to this Court, such payment would constitute a complete acquittance of the bank with respect to the obligation so paid. We submit that the rule applicable to payments made to the clerk, register or commissioner of a court; to a collector of taxes; to a collector of customs; or to any other public agent authorized to receive payment,

would be applicable in the instant case, and would constitute payment of consideration by the land bank in the manner authorized by law.

This rule has been applied by the Supreme Court of North Carolina, in the cases of *Sharpe, Admr.*, v. *Connelly*, 105 N. C. 87, 11 S. E. 177, and *Smith* v. *Patton*, 131 N. C. 396, 42 S. E. 849. In each of these cases, property was sold under judicial proceedings, in the one instance under a decree of foreclosure, in the other pursuant to a decree of partition. In each case, a portion of the proceeds of sale was deposited with the clerk of the court, to be held by him subject to further orders of the court. In both instances the clerk failed to pay over the money to the parties entitled thereto, and the Supreme Court held that consideration had nevertheless passed for the property. It is submitted that in this case, the Supreme Court of North Carolina failed to follow its own rule, laid down in the two cases just cited, relative to the validity of a payment properly made to a public officer for the use and benefit of another.

We believe, however, that a national farm loan association may not properly be regarded as a "public agent." The association is organized by the voluntary act of individual persons, for their mutual benefit. The members of an association come into the organization for the purpose of obtaining, through its cooperative facilities, the favorable terms available to the association's members. By joining the association, and seeking through it loans from a Federal land bank, the members are enabled to obtain credit at low interest rates, with low initial charges, secured by first mortgages which are repayable in installments over a long period of years. The motives which actuate a farmer in applying through a national farm loan association are motives of personal benefit. The facilities of the

association are available because he and others have thought it desirable to join a cooperative enterprise and avail themselves of the benefits. An organization of this character is, we submit, utterly different from a public agency.

IX. Mortgage Not Invalidated by Loss of Loan Funds While Held by Indorsing Association.

Question No. 4

> Whether a mortgage executed and delivered to a Federal land bank is impaired or invalidated due to the loss of the sums transmitted in consideration of such mortgage, while such sums are in the hands of the indorsing national farm loan association, which has receipted for the same.

It has previously been demonstrated that, whether this case is considered in the light of general law or under the provisions of the Federal Farm Loan Act, consideration must be deemed to have passed for the mortgage executed in favor of the Federal Land Bank of Columbia by the borrower. If the Court concurs in this contention, and holds that the bank had paid the full consideration for this mortgage, we submit that there is no theory on which it could be found that the mortgage subsequently became impaired or invalidated.

The mortgage itself contains no provision relieving the borrower of liability for repayment of the loan in the event of any contingency occurring after the closing date. On the contrary, the mortgage specifically establishes a lien on the property therein described to secure the repayment of the note in accordance with its terms. Therefore, consideration having been given by the land bank for this note

and mortgage, we submit that the contract was fully performed by the bank, and that it remains valid and enforceable.

X. Conclusion.

It is, we submit, clear, under the law and the admitted facts, that:

1. The provisions of the Federal Farm Loan Act determine the rights and liabilities of the bank and the borrower, and, so determined, (*a*) the Columbus National Farm Loan Association was the agent of the borrower, and delivery of the loan funds to the secretary-treasurer of the association, was delivery to the borrower; (*b*) payment of the loan funds by the bank to the Columbus National Farm Loan Association was in accordance with the authorization of the Federal Farm Loan Act and was a complete discharge of the duty placed upon the bank by the Act and by the loan contract with the borrower, and there was consideration for the note and mortgage in question.

2. It was never intended by the Congress that a Federal land bank should be placed at the mercy of a national farm loan association, not its creature, not its agent, and over which it has no control or supervision whatsoever. The contrary is clear, that, when a borrower voluntarily goes into a national farm loan association, secures election to membership, files his application for a loan, and adopts the machinery of the national farm loan association, of which he is a part, for the purpose of securing it, he does so at his own risk, and the Federal land bank is protected, and has completed its duty, when it pays the loan funds to the national farm loan association, and there is con-

sideration for the note and mortgage executed by the borrower to the Federal land bank.

Respectfully submitted,

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